06. 16.12.2016 Heard learned counsel for the parties.

2. The Management of Bisra Stone Lime Company Limited has filed this Writ Petition assailing the award dated 9th September, 2012 passed by learned Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (for short, CGIT) in Tr. Industrial Dispute Case No.59 of 2001 (Annexure-5) holding 331 workmen, as per the list enclosed to the reference, are entitled to get their salary for 4 days, i.e., from 16.09.1998 to 19.09.1998, which was withheld by the Management. Further, it was directed that payment of salary for the aforesaid four days should be made within one month from the publication of the award in the official gazette.

3. The reference before the learned CGIT for adjudication was as follows:-

Whether the action of the Management of Bisra Stone Lime Co. Ltd., Dist. Sundargarh, in deducting 4 days wages from 16.9.1998 to 19.9.1989 from the salary of those workers (as per list enclosed) who have worked till 15.9.2008 (i.e. without participating in any strike) is justified? If not, to what relief the workmen are entitled?

4. A strike was called by the workmen against the Management on 16.09.1998, which continued up to 19.09.1998 for which the work of the Management was completely disrupted. There were about 2200 workers under the Management. As majority of the workmen had gone on strike, the Management had to suspend the work which amounted to lockout for the said limited period. It was contended by the Management that since the strike called by the workmen was illegal, the lock out was justified. Thus, the reference was not maintainable and the workmen were not entitled to the salary for the period of lockout, i.e., for the period of 4 days.

5. The workmen on the contrary contended in their written statement that there were different departments of the Management, which were involved in mining operation. While receiving their salary for the month of September, 1993, the workmen found that the salary for the period 16.09.1998 to 19.09.1998 was withheld by the Management without valid reason. On enquiry, they could come to know that the Management had closed the mines/factory on the ground of strike called out by the workmen. It was further contended that they were not parties to the strike. They were ready and willing to attend their work, but the Management did not allow them to enter into the premises of the factory. The closure of the factory was without notice, which was illegal. Thus, they raised dispute before the labour machinery and on failure of the conciliation, the matter was referred by the appropriate Government to the CGIT for adjudication. Hence, they prayed for answering the reference in their favour and to pay the salary for the aforesaid four days.

6. Learned Tribunal on a threadbare discussion of the pleadings, materials on record and respective contentions of the parties, came to the following conclusion:-

9. .After perusal of the evidence of both the parties I am of the opinion that the 1st Party-Management has failed to make out a case that there was justification for passing of order of suspension of work. Even if when the members of the 2nd Party were willing to work, sufficient precaution should have been taken by the 1st Party-Management who were alleged that the work of some important sections were allowed to carried on.

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10. In this case, the case of the 2nd Party is that due to the order of suspension of work passed by the 1st Party-Management they could not attend the work though they are willing to work and admittedly they were not the party to the strike made by other workmen. This fact has not been disputed by the 1st Party-Management because the witnesses examined on behalf of the 1st Party-Management has categorically stated in the cross examination that they did not know whether the members of the 2nd Party have taken part in the strike or they were forced not to attend the work. In that case, I am of the opinion that, absence of the four days i.e. from 16th Sept. 1998 to 19th Sept. 1998 by the members of the 2nd Party was not intentional. The circumstance was beyond the control of the members of 2nd Party.

On the basis of the aforesaid finding, learned CGIT passed the impugned award.

7. Learned counsel for the Petitioner strenuously urged that it was not possible on the part of the Management to find out who were interested to work during the period of strike called out by the majority of the workmen. The contesting workmen never approached the Management to perform their duty. As such, when the majority of the workmen were on strike, the Management had to suspend the work for the period they went on strike. This material fact was not considered by the learned CGIT while adjudicating the reference. As such, the impugned award is liable to be set aside.

8. Learned counsel for the workmen, on the other hand, supported the impugned awa

rd and contended that they had gone to attend their duty. Since the premises was locked out, t hey were prevented from performing their duty for the aforesaid four days. Hence, the learned Tribunal was justified in directing the Management to pay the salary, i.e., from 16.09.1998 to 19.09.1998 (for four days.).

9. Having heard learned counsel for the parties and on perusal of the impugned aw ard under Annexure-5, it evinces that the learned CGIT has taken into consideration the respec tive contentions of the parties and also scrutinized materials on record meticulously. On a ba re perusal of the record, it is apparent that there is no positive evidence that 331 workmen, who approached the labour machinery for their salary had participated in the strike. On the ot her hand, the witness examined on behalf of the Management had categorically stated in his cro ss-examination that the Management did not know whether the members of the 2nd Party (workmen) had taken part in the strike or they were forced not to attend the work. Apparently, there wa s a lockout and the workmen had no occasion to approach the Management to perform their duty. In that view of the matter, we find no infirmity in the impugned award under Annexure-5.

10. Accordingly, the writ petition merits no consideration and is dismissed.

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S.C Parija, J.

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K.R. Mohapatra, J.

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